

SEED ADVISORY BOARD
California Department of Food and Agriculture
Plant Diagnostic Center
3294 Meadowview Road
Sacramento, CA 95832
November 17, 2005

Agenda Item #1 – Roll Call

Chairman Keithly called the meeting to order and requested Heaton to record attendance at 9:15 am. The following members and guest were in attendance.

Members:	David Godfrey
Rick Falconer	Betsy Peterson
William Van Skike	Rich Matteis
Ron Tingley	Kent Bradford
Cher Williams	Deborah Meyer
Ken Scarlett	Jim Effenberger
Larry Hirahara	Connie Weiner
Gabe Patin	Nicole Gambrell
	Kent Bradford
Guests:	Allen Van Deynze
Umesh Kodira	Sue Webster
John Heaton	

Agenda Item #2 - Minutes from recent meetings; May 18, 2005, June 9, 2005 and August 2, 2005

Chairman Keithly asked for acceptance of the minutes from the three previous meetings. Heaton noted that Umesh Kodira submitted some minor changes or corrections to names and titles that were in the initial draft of minutes from the August 2, 2005 meeting. The corrections were included in the present draft under consideration by the Board. Tingley motioned that the minutes be accepted. Williams seconded the motion. The motion was approved by unanimous vote.

Changes/Additions to the Agenda:

Chairman Keithly called for any changes to the agenda. Heaton requested that item five on the original agenda be moved back to the position directly after the discussion about increasing the funding for the UCD Seed Biotechnology Center. This resulted in items six through nine moving forward on the agenda and the presentation of the Fund Condition for Seed Services and the Seed Laboratory moving to position nine on the agenda. Godfrey requested that a discussion of an assessment rate increase be inserted as line 9a on the agenda. Heaton noted item fourteen, a discussion of the Bagley Keene Act and procedures required for public meetings and future agendas. Chairman Keithly accepted the changes and called for any other additions. There were none.

Agenda Item # 3 - Recent Developments in the Seed Laboratory

Deborah Meyer noted the retirement of Dr. Mariam Stephenson after 18 years of service to the California state seed lab. Dr. Stephenson was responsible for regulatory seed physiology testing, regulatory data system management and seed physiology research. In recent years she served as an active member of the Association of Official Seed Analysts (AOSA) Tetrazolium Testing Research Committee. The Civil Service Exam process has been started in an effort to replace Dr. Stephenson by early 2006.

Trips by Laboratory Scientists

Meyer reported that she accompanied, Mr. Effenberger and Dr. Stephenson to the joint annual meetings of the Association of Official Seed Analysts (AOSA) and the Society of Commercial Seed Technologist (SCST) held in Saskatoon, Saskatchewan, Canada on June 14 - 22, 2006. The main topic of the meeting was the need for a unified, global approach for seed testing and seed lab accreditation. Meyer participated

as an instructor for a two-day workshop that reviewed seed testing rules required by AOSA, the International Seed Testing Association (ISTA), and the Canadian methods and procedures. She reported that Effenberger participated at the Executive Board level.

Meyer also noted the importance of identifying differences in rules and laboratory protocols that can impede trade and which need further discussion to resolve differences in order to provide more uniformity to seed testing throughout the world. She noted the commitment by personnel of the seed lab, sighting Jim Effenberger's utilization of personal funds to attend the midyear Executive Board meeting of the AOSA. Meyer provided copies of her Out of State Trip Report filed with CDFA on July 7, 2006 for those wishing to learn more about the meeting.

In August, Meyer served as a workshop instructor for seed identification of large legumes at the Idaho Bean Workshop. Her trip was taken on personal time and paid for by the Idaho Seed Analysts Association.

In September Effenberger attended the Federal Seed School held at the USDA Seed Laboratory in Gastonia, North Carolina. His trip was paid by the Federal Government as part of a cooperative agreement between state seed control officials and the USDA Seed Lab .

Another activity at the seed lab is the major renovation of the State Seed Herbarium. This collection is believed to be the third or fourth largest seed collection in the world, containing more than 50,000 specimens. An effort is presently being made to upgrade the nomenclature so that it matches the nomenclature used by the USDA Germplasm Resources Information Network (GRIN), which is the standard for seed testing organizations such as AOSA, SCST and ISTA. In recent months, approximately 2,000 new specimens have been added to the herbarium.

Meyer also reported that the lab has received a request to provide training to the border inspection stations sometime during the next year.

Sample Workload

Sample workload was reported to be slightly less than the number of samples reported last year. Although the figures for 2005 only reflected 10.5 months, Meyer didn't expect a great increase in the number of samples during the remaining weeks of the year. She provided a table to report the following breakdown of the samples completed to date by the lab:

Quarantine noxious samples	1443
Identification (others)	52
Mill approval samples	37
Service samples	463
Regulatory label compliance	<u>751</u>
Total	2746 samples completed

In addition, the handout included a pie chart to show the proportion of completed tests associated with the different sample types. Meyer noted that the percentage of tests completed for each type of sample does not represent the time spent by the lab to complete the tests for samples of that type.

Quarantine noxious samples	29%
Identification (others)	47%
Mill approval samples	2%
Service samples	20%
Regulatory label compliance	<u>47%</u>
Total	100% of tests completed

Revenue received from testing of 463 service samples during January 1 through November 15, 2005 was reported to be \$22,669. This amount was compared to \$16,833 received from testing 465 service samples during the same period of 2004. Meyer attributed the increase in revenue to the increase in sample fees that went into effect in December 2004.

Lab Accreditation

Meyer recalled previous discussions by the Board about the difficulty the lack of laboratory accreditation presents to participation in international seed trade. She explained that several strategies have been developed, or are being developed to deal with this hurdle. She provided a handout to compare the USA Accredited Seed Laboratory (ASL) Program with the National Seed Health System. The handout identified the administration, authority, objectives and scope of the accreditation by each program, as well as the direct and hidden costs of accreditation. The handout also provided a brief comparison between accreditation by the International Seed Trade Association (ISTA) and USA ASL accreditation. While accreditation by ISTA allows a seed lab to issue ISTA certificates for international seed shipments, the downside is the considerable cost of ISTA membership dues of \$4,492 per year and audit fees of \$7500 every three years. The USA ASL program will provide an alternative accreditation for U.S. laboratories that should be recognized by the international seed trade. For additional reference, Meyer directed attendees to review the USA ASL website at <http://www.ams.usda.gov/lsg/arc/reqasl.htm>.

Rich Matteis asked about the status of a draft for regulations that would provide lab accreditation by the department. Godfrey replied the draft was initiated years ago but has gone nowhere. Matteis inquired as to whether those regulations were part of this same laboratory accreditation currently being discussed. Meyer explained that the previous proposal was setup to provide accreditation similar to the National Seed Health System (NSHS) for field inspectors, as well as for laboratories performing seed health testing for issuance of phytosanitary certificates. Matteis inquired if the regulations have been prepared. Godfrey answered that they have not been prepared. Umesh Kodira clarified that the regulations he believed to be in draft would have setup an accreditation program by which the state seed lab would accredit private labs in California. He stated that the department could pursue those regulations if that is what the industry wanted. He noted that a similar discussion regarding accreditation of seed labs took place with the Undersecretary at the August meeting. He also indicated that if the regulations were passed more resources would be needed and the Seed Lab would not be able to run the accreditation program with the current level of staffing.

Meyer clarified that in California the seed pathology portion of seed testing is performed by the plant pathology lab and not the seed lab, which is only responsible for standard seed testing. As such, the Board is not associated with the lab that performs the seed pathology part of testing.

Gabe Patin asked if seed pathology testing produced any income for the seed laboratory. Meyer responded that it did not produce any income for the seed lab, but did produce some income for the seed pathology lab.

Matteis wondered why the draft that was initiated by the department, didn't get moved forward. Meyer responded that the draft was written at the same time that the NSHS was under development. The seed lab accreditation was developed cooperatively with the Association of Official Seed Analysts (AOSA), the Society of Commercial Seed Technologists (SCST), the Association of American Seed Control Officials (AASCO), the American Seed Trade Association (ASTA), the Crop Improvement Associations and the USDA-AMS. The USA ASL accreditation program was designed to be similar to ISTA accreditation for seed laboratories. It is a system that is equivalent to ISTA but one which allows the United States to maintain control over its own system.

Trips by Seed Services

Heaton next reported on his trip to the AASCO meeting held in Austin, Texas last August. Godfrey also attended to provide a status report for AB1508 and to participate in discussions about local ordinances that attempt to regulate seed sales at the local level. AASCO VP Larry Nees led the discussion and provided a brief summary of preemptive regulations adopted by various states. The language of the regulations clarifies the authority and jurisdiction of each state to regulate seed sales. In addition, Nees also identified Intellectual Property Rights as the most important issue currently facing the seed industry.

Heaton also noted that Tim Gutormson of Mid-West Seeds reported that ISTA recently approved a change in their rules to allow U.S. labs to become ISTA accredited. Currently there are only four ISTA accredited labs in the U.S., none of which are in California. Other AASCO members commented that although

government and university officials are currently exempt from the requirement to be ISTA accredited samplers, that exemption may soon be cancelled and government or university seed samplers would be required to become accredited by ISTA to sample seed destined for analysis by an ISTA accredited lab. This type of sampler accreditation could potentially cost thousands of dollars for sampler organizations such as state Seed Programs and county inspectors.

Heaton then reported on his September trip to Brookings, South Dakota for training to become an ISTA accredited sampler. While he passed the training, and received his certificate for successful completion, he will not be accredited until he completes several additional requirements noted in his trip report. Cher Williams asked Heaton if accreditation was something the Program was pursuing. Heaton explained that his attendance was a preparatory step in the event government officials lose their exemption and the need arises for someone in the program to immediately become accredited to pull ISTA samples. Williams commented that industry personnel are able to obtain accreditation. Heaton acknowledged that individuals from two California seed businesses were also in attendance at the training in South Dakota.

Tetrazolium Database

Next, Jim Effenberger reported on efforts by the Tetrazolium (TZ) Committee of the AOSA to organize the protocols of TZ testing to indicate seed viability. For many years there has been discussion about the equivalency of TZ testing to germination testing. He noted that since the TZ test only takes about 1 day, while some germination tests take 28 days, the industry has been receptive to the idea of placing a TZ Viability statement on the label as an alternative to percent germination. In an effort to settle the argument about equivalency between germination and TZ tests, the Committee decided to construct a database to gather information from various labs around the world to input their TZ/germination data. A programmer has written a program to facilitate data input via the internet, however the cost for the program is \$2,000. Since AOSA cannot afford this price, Effenberger will be soliciting donations from various organizations. He requested the Board to consider drafting a letter to the California Seed Association, indicating that the Board supported the concept of developing the TZ database so that the TZ Committee could properly evaluate the merits of using a TZ Viability statement on seed labels, as an alternative to the percent germination. He noted that in order to make the determination of equivalency, many data points will have to be considered.

Van Deynze noted that dormant seed will give a positive TZ test. Meyer noted that for some species known to have dormant seeds, the current testing protocol is to run the germination test and to then use a TZ test on the seeds that didn't germinate. She stated that the problem with the split protocol is that some of the ungerminated or dormant seeds, get deteriorated due to test conditions. Consequently using the TZ test just at this point doesn't give a complete picture of the original seeds' viability. She further noted that the results depend on the crop. Effenberger pointed out that many native grass species are very dormant and that germinations tests often show only 13 or 14% germination while TZ tests may show 90% viability. He noted that the Bureau of Land Management purchases most of their native grass seeds based on TZ test results.

Kent Bradford asked how data in the proposed database could be used to account for the discrepancy between germination test results and TZ test results when dormant seeds are present. Meyer responded that the TZ Committee would have to evaluate whether the dormant factor is a problem for individual species. She agreed that for some species it may not be possible to make a clear equivalency between the germination and the TZ test. Effenberger noted that the Seed Control Officials would ultimately have to make the determination if the TZ test will be an acceptable alternative to a germination test for certain crops.

Ken Scarlett asked Effenberger to clarify if he was asking the Board for money or just seeking approval for constructing the TZ database. Effenberger clarified that he was seeking advice from the Board and perhaps some sort of endorsement for development of a TZ database so that any future proposals to label certain seed with a TZ Viability statement, as an alternative to the percent germination statement, could be thoroughly evaluated. Effenberger noted that an endorsement by the Board could be used in letters to various industry groups to solicit donations for development of the TZ database. Scarlett speculated that perhaps the BLM would give \$2000 to the TZ Committee since the information would provide useful

information for the kind of seed they purchase. He stated that he agreed with Effenberger's effort to solicit funding from various sources for the development of the TZ database. Van Skike noted that \$2000 is not a tremendous amount of money for the industry to spend in order to definitively learn if a TZ test can be used as an alternative to a germination test for some crops. Scarlett encouraged Effenberger to write his letters to solicit funds and suggested he could return to the Board if no funding was received from other sources. Van Skike made a motion that the Seed Advisory Board support the drafting of a letter by the TZ Committee at AOSA, seeking funds for development of the TZ database.

Agenda Item #4 - The Status of Seed Sampling by the CDFA Associate Biologists

Heaton reported that in response to the Board's June directive that CDFA take-over the collection of seed samples, he held a meeting with the CDFA District Biologists and the laboratory staff on July 13, 2005. As a result of discussions at that meeting, Heaton felt it was appropriate to reduce the number of samples to a more manageable quantity during the period of transition that CDFA staff assumed responsibilities performed previously by county personnel. He explained that part of the reason he reduced the number of samples to be collected from 1000 to 600, was his analysis of the previous year's sampling effort. It revealed that the samples collected in 2003/04 were in compliance 85% of the time. The remaining 15% were in violation of the California Seed Law either because the stated germination was slightly out of tolerance (~7.5%) or the stated purity was slightly out of tolerance (~7.5%). Very few samples had stated germinations or purities that were extremely out of tolerance. Heaton further stated that by reducing the number of seed samples, the program would have more flexibility to handle other responsibilities, such as seed complaints, during this year of transition. To assist the District Biologists, he provided each one of them with a list of their counties and the number of samples that should be collected.

Heaton then referenced a handout titled Status of Sampling by CDFA District Biologists Year-to-Date in FY 2005-06. The handout presented the number of samples to be collected monthly by each District Biologist and showed how a running-tally of the number of samples submitted to the lab, are tracked over time. By mid September Heaton noticed that the lab was not receiving a steady flow of seed samples. He wrote a letter dated September 29, 2006 to each of the Associate (District) Ag Biologists (See page 3 of Heaton's handouts). The letter explained that he was providing four lists to assist each Associate Ag Biologist in his new responsibility; 1) The number of samples expected by county 2) A directory of firms in each county 3) a list of samples collected the previous year by counties in their district – sorted by date, so they could easily see when and where seed has historically been available to county inspectors 4) a list of the samples collected the previous year by counties in their district – sorted by location, so they could quickly reference available facilities as they traveled throughout their districts.

At the end of October, Heaton again evaluated the number of samples submitted to the lab. Since each district was considerably short of the target amount expected after four months of sampling, Heaton requested that each District Biologist provide a written explanation to describe the problems he encountered, so that their difficulties could be presented to the Board (See letter dated Nov. 3, 2005). Copies of the responses from the District Biologists were provided as the last pages of Heaton's handouts. Two District Biologists reported that they found it difficult to juggle seed sampling with other responsibilities such as strawberry certification and nursery inspections. One District Biologist expressed difficulty due to travel time and the availability of seed for sampling. Heaton presented an analysis of the miles reported by that biologist, but felt it was too early to draw any conclusions.

Heaton then reported how the current CDFA sampling effort compares to sampling efforts previously done by the counties. Although the number of samples submitted by CDFA was less than he expected for the year to date (YTD 106 vs. 252), he stated that his analysis showed the CDFA sampling effort was better than the counties did the two previous years. For comparison purposes, it was necessary to put the two sampling teams on the same pace or rate of sample collection. To do this he calculated the average number of samples submitted by counties the last two years, over the months of July through October (142). Since the counties were on the rate of 1000 samples per year, for comparison purposes the 142 samples would need to be reduced downward by 40% or to 85 samples. When both sampling teams are put on the same rate of 600 samples per year, the performance YTD by the CDFA District Biologists is $(85/106 \times 100)$ or 125% of the effort previously demonstrated by the counties.

Heaton acknowledged that CDFA is collecting fewer samples than the counties previously collected, but he explained that he felt it was necessary for several reasons. He noted that the lab has experienced a backlog of seed samples for some time and that with the pending retirement of Mariam Stephenson, he believed the time was right to reduce the number of samples for the lab to process. In addition, since the Associate Ag Biologists have to juggle their new responsibilities with previous duties, he wanted to reduce the number of samples they needed to collect so they could be available when Heaton needed them to assist with seed complaints or enforcement actions related to PVP violations or unregistered labelers.

Gabe Patin asked Heaton to clarify if the CDFA District Biologists have completely taken over the seed sampling responsibilities of the Ag Commissioners. Heaton explained that CDFA was now responsible for collecting official or regulatory samples, but that the counties are still responsible for collecting service samples when requested by seed companies. He further stated that since counties will continue to collect service samples, they still have a need for some level of sampler training. He also emphasized that during some seed complaints it is more expedient to have a county inspector pull an investigative sample rather than to wait for a CDFA Biologist to adjust his schedule and travel to the seed storage location. Since investigations require quality evidence, Heaton felt it is very important for the county inspectors to know how to pull an official seed sample in accordance with the California Seed Law. He expressed doubt that the Seed Services Program could completely abandon the past practice of training seed samplers in each county.

Van Skike stated that he didn't believe the Board intended for the Seed Services Program to completely eliminate seed sampler training. Instead he believed the Program would provide enough training to allow county inspectors to participate in seed complaints if needed. Scarlett stated that part of the reason for having CDFA collect samples was the concern that the counties were not using the proper methods to collect the seed samples. He asked Heaton how the rate of errors for samples submitted by CDFA samplers compares to the historical rate of errors by the counties. Heaton admitted that the backlog in the lab was mainly due to sampling or documentation errors when samples were submitted to the lab. Meyer requested Heaton to clarify that the lab was not backlogged, but rather there was a backlog in samples on hold because of sampling or documentation errors the Seed Services Program had not addressed in a timely manner. Heaton recognized Meyer's point and stated with a 20% error rate on 1000 samples, it became a daily task to address the errors associated with submitted samples. He explained that he developed a system to handle those errors but that since the counties are no longer submitting official samples, the system is not as necessary. Scarlett inquired if the samples still have errors. Heaton acknowledged they do have errors and that they are being addressed. Van Skike asked if perhaps the errors would go away as the transition progressed. Heaton believed they would. Meyer noted that the lab still receives a lot of errors on the documentation of service samples submitted by counties.

Patin inquired as to the number of state employees involved in the collection of official or regulatory seed samples. Heaton replied that there are four District Biologists involved, but only one is paid 100% by the Seed Services Program. The other three biologists are shared with other programs and Seed Services only pays 25% of their salary.

Bradford asked how the error rate of the state compared with the error rate of the counties. Heaton replied that he has not performed such an analysis yet because it is really too early in the state's sampling effort to make that determination.

Scarlett asked if the state is required to do service samples. Heaton stated that he doesn't believe the state is required to do service samples since it is exactly that, "a service." Effenberger explained that service samples are submitted by counties so companies can get phytosanitary certificates. He said there has been a big increase in the number of these kinds of service samples this year. Rich Matteis commented that phytosanitary-testing activities are not really part of the Seed Program but rather a Pest Exclusion activity. Heaton explained that he has received calls from companies that have import permits from foreign governments, which require a service sample be pulled by a government official and then sent to an accredited lab for testing under ISTA protocol. Heaton stated that he tells those companies to contact their county agricultural department and to request that a service sample be pulled. He believes however, that

eventually the sampler will have to be an accredited ISTA sampler. Scarlett pointed out there are private labs that can do accredited sampling.

Meyer sought to clarify that the analysis of these kinds of service samples is actually part of the Seed Program, since the fees are in the law as a service available to the industry. Matteis replied that the service samples are treated differently, not necessarily with concern to the California Seed Law. Heaton clarified that the services samples are not being evaluated for compliance to the California Seed Law. Meyer agreed. Scarlett then commented that it seems the CDFA lab is acting like a seed lab and is competing against private seed labs. Meyer replied that the CDFA lab does not compete since it does not advertise and since its prices are set at whatever level the law determines. She added that if companies want to send their samples for testing at the prices set for the CDFA lab, then they are free to do so.

Matteis asked if the service samples submitted for phytosanitary requirements are cases where the importing country is requiring the seed to be tested at a government lab. Heaton clarified that the requirement is for the sample to be drawn by a government official and not necessarily analyzed at a government lab. He explained that seed can be tested by private labs if they follow the appropriate testing protocol. Meyer added that when the importing country is requiring a certificate from a government lab, the seed sample may be sent to the CDFA lab or possibly a government lab in another state. She reminded the Board that when an ISTA certificate is required, there are only four labs in the United States that are currently accredited and can issue ISTA certificates. If an ISTA certificate is not required, a non-accredited lab can still test under ISTA rules. She explained that while the CDFA lab is not an ISTA accredited lab, it can and does test seed using the ISTA rules. The certificates issued by the CDFA lab, however, are standard government certificates (non-ISTA certificates) that simply indicate the sample was tested using ISTA rules. She added that since these certificates are coming from a government laboratory, many foreign governments accept them in lieu of an ISTA certificate.

Cher Williams clarified that not all foreign governments accept this substitution. Meyer agreed.

Williams then explained that her company uses a private, ISTA accredited lab that can provide an orange ISTA certificate. In addition, her company has an accredited seed sampler that can pull the sample and send it to the ISTA accredited lab. She also stated that although the USDA does not currently allow their seed sampler to pull samples for quality testing, there is a push by the industry to have seed samplers approved to pull official samples.

Scarlett asked about the identity of the four ISTA accredited labs.

Meyer replied that there are two government labs that have ISTA accreditation; the Federal Seed Lab in Gastonia, NC and the National Tree Seed Laboratory, and two private labs; Midwest Seeds in Brookings, South Dakota and Agri-Seed Testing in Salem, Oregon.

Williams commented that Midwest Seeds provides sampler training and sampler accreditation so that a company can pull their own seed samples.

Meyer added that there are several requirements when sampling for eventual issuance of an ISTA orange certificate, including sampling from a limited lot size and sealing the lot. She explained that the ISTA orange certificate is used to certify the entire lot while most of the standard certificates circulating in the U.S. only certify the sample.

Falconer asked if the efforts by industry were directed toward receiving some sort of accreditation from USDA APHIS. Meyer replied that rather than going through APHIS, she would recommend going through USDA AMS and adding sampler accreditation to the laboratory accreditation protocol. She believes that the AMS is more flexible and they already have an accreditation process in place for other programs.

Williams stated that she believed the seed industry would approve of such a strategy for accreditation of samplers because it allows companies to do their sampling on a more timely basis rather than waiting for a government sampler.

Meyer suggested talking to Jim Riva at USDA-AMS about an accreditation program for samplers. He is in charge of the audit, review and compliance branch for AMS. His program is responsible for overseeing several accreditation programs that deal with agricultural commodities, including seed.

Larry Hirahara returned the focus of discussion to the seed sampling effort by CDFA employees. He asked Heaton if he was satisfied with the performance of the CDFA District Biologists. Heaton replied that on the basis of his analysis, it appears they are performing adequately. He added however, that he felt it was too early in the year to make a fair assessment. He noted that initial sampling efforts lagged because it took a couple of months to organize the sampling efforts since he was also traveling to various meetings. In addition, the primary Biologist at Riverside retired and the replacement had to be trained to do seed sampling, which Heaton did in September. At that point he assessed the flow of samples to the lab and started communicating the need for greater sampling effort from the District Biologists.

Hirahara asked if the samples were coming to the lab at an even pace. Heaton admitted that the Program is still trying to achieve that goal.

Van Skike commented that the Board did not switch to CDFA samplers simply so an even flow of samples would come to the lab. He said part of the idea was to be able to target problem areas and many times that kind of seed may only be available on a seasonal basis, in which case the samples would have to flow to the lab at an uneven pace. Heaton agreed and commented that this situation had already occurred when ten samples associated with an investigation of a PVP violation were sent to the lab. He explained that the Seed Services Program investigated a brown bag operation that involved six farms with enough seed to plant approximately 12,000 acres with a PVP variety. He said that the investigation facilitated a quick settlement between the PVP certificate holder and the brown bag operation.

Matteis explained that the idea was to allow for flexibility but to also be able to target problem areas and to provide even enforcement among counties. Heaton added that there is still representative sampling in each county that has labeler activity.

Agenda Item #5 - The Status of Seed Subvention Contracts

Patin asked about the reaction from Agricultural Commissioners regarding the directive for CDFA to assume the responsibility for collecting seed samples. Heaton replied that one of the problems the Seed Services Program encountered in July was to figure out how the performance of counties would be measured if they were no longer responsible for collecting samples. He explained that the state will not allow the Program to simply distribute money allocated by the Board to the various counties. Instead, the counties must enter into a contract with CDFA which specifies a scope of work and the measurements of their performance. The Report 6 has historically been submitted by counties each month to report sampling activities and to serve as the basis for measuring their performance. With the new directive for CDFA to collect the seed samples, it became necessary for the Program to revise the terms of the contracts with the counties and to reorganize the categories of the Report 6. The scope of work in the new contracts specified that instead of collecting samples, the counties shall evaluate labels of seed lots to determine if they are in compliance to the California Seed Law. In addition, they are required to participate in the seed complaint process.

Van Skike asked if it is possible to pay the counties on the basis of some sort of retainer fee for assistance in seed complaints. Godfrey said that provision is already in the contract. Matteis asked if changing the law would help. Godfrey said he didn't think it would since it is a contract issue. Heaton wondered if the contract could specifically mention an amount for retainer. Matteis wondered if the law could be made vague enough to allow a retainer fee in the contract. Godfrey said the contract is already vague because we don't know how many people might get registered by the counties. If the county finds an unregistered labeler, they are encouraged to put a stop sale order on the seed. The idea is to have a measure in the

contract so that there is a financial incentive for the counties to enforce many aspects of the seed law. He explained that the new Report 6s reflect a transition or an attempt to implement some of these ideas.

Heaton added that one new feature on the Report 6 is a line for counties to report evaluations of 008 reports. He explained that the 008 reports are issued to counties by border inspection stations when seed is caught coming across the border. The idea of having counties report their evaluations of 008 inspections is to get some measure of how much seed is coming into California from unregistered labelers. Part of the reason for this change is to make sure out of state labelers are paying their share of the assessment that registered labelers are already paying. Heaton plans to eventually develop computer programs that will compare the sales reported by each company over years in order to search for significant drops that affect the amount of assessment they paid. In addition, he plans to compare the amount of seed intercepted by the border inspectors with the value of seed reported by the out of state labelers. He stated that it is important that they pay their share of the assessment so that registered labelers do not pay any more than they have to. He noted that when companies don't pay assessments, it impacts the entire program.

Patin commented that the information collected in the Report 6 seems to just be a justification for payment to the County Ag Commissioners. He asked why the Program couldn't just determine the labeler activity in each county and allocate the money proportionately without all of the contract and Report 6 process. Heaton commented that perhaps something like that could be put into the law. Matteis noted that the current process essentially accomplishes proportionate payment. Patin replied that since the state has taken over the sampling, which was the primary activity that the counties performed, it would be nice to have a simple way to continue to provide money to the counties for seed law enforcement. Godfrey reiterated that the state requires a contract be in place before the Program can give money to the counties. He explained that contract rules change and create a challenge for the Program. Heaton added that the rules require that the contract contain a scope of work and a way to measure the performance of that work. He further explained that records must be kept because the contracts can be audited. Godfrey explained that the Program was audited years ago and was told to develop measures for the scope of work. Consequently, he developed the initial performance measures in the Report 6 and the units of activity concept for seed sampling. He noted that if the measures indicate a county did not perform the work, the Program can withhold the amount contracted. Heaton explained that the contract process requires much background work that requires the Program identify the expected scope of work before the contract is executed. After the sampling year, the work performed by each county must be determined and communicated to each county to see if they agree. Once all of the counties agree, they will invoice the Program and request payment. Heaton added that this process is a huge administrative task.

Van Skike asked if the industry needs to re-evaluate what criteria should be place in the scope of work. Godfrey replied that during this transition year, Heaton is working with the counties to develop the new scope of work.

Heaton stated that a new concept added to the subvention contract and to the instructions for the Report 6, is a way for counties to get credit for extra labels evaluated when the County Agricultural Commissioners participate in the Investigative Committee Meeting of a seed complaint or the arbitration process. The evaluation of extra labels by counties translates into money from a leftover kitty not obligated in the contracts. The kitty gets divided and distributed to all counties that perform extra work. In the past, the amount for an extra sample has ranged from \$100 to just over \$300.

Van Skike asked if a discussion of the criteria for scope of work would be appropriate at the annual meeting of the California Seed Association. Matteis stated that such a discussion could be arranged, but the jest of his earlier question was to explore if a change to the subvention provisions of the seed law could be achieved to make payment based on the number of registered seed labelers so that counties would not be required to do anything. Tingley asked if such strategy would put us back into the situation Godfrey encountered in the early 90s, when no work was being measured and the auditors objected. Godfrey said if we were audited under that scenario, the auditors would say that we are not doing the Program right. Matteis asked if the auditors would object even if the law said no performance criteria are necessary. Godfrey said they would because performance criteria are the basis of the contract. He added that the reasoning for this is that regardless of the idea that it is the industry's money and the Board wants to give it

away, once it comes into the coffers of the state, it becomes state money under the responsibility of the Secretary. The Department is very serious about following the contracting process, which requires a scope of work and performance measures fulfilled before payment can be made.

Scarlett asked if the new scope of work is better. Heaton replied it is evolving but he believes it is getting better. He explained that the Program was behind in payments to the counties because of the complexity of performance measures and because Godfrey was promoted. Since his position was not filled for some time, a backlog was created that took some time to dig out from under. Payment for work performed in 2002/2003 was made in June. Heaton has requested Financial Services to make payment to counties for work done in 2003/2004.

Godfrey added that part of the delay in payment was the fact that payments are made in arrears and counties do not always return evaluations and invoices in a timely manner. If there is one straggler county, it can hold the whole process up, especially if they disagree with our assessment of their performance. Heaton added that some counties take extra time because they must consult with their Board of Supervisors before they sign the contract or payment invoice. He expects the whole process to take less time under the new contracts because now the state is collecting the seed samples and counties only have to provide a summary of the labels they evaluated. He explained that the payments the counties are expected to receive will be comparable to what they have received in the past. These payments will still be proportionate to the number of labelers in their county and the units of activity they report to the Seed Services Program. So far, Heaton has received mostly positive feedback from counties because they recognize it takes a lot less time to evaluate labels than to draw samples.

Van Skike encouraged the inclusion of a provision in the contract that would result in less money to a county if the county did not return the required documents in a timely manner. Heaton acknowledged Van Skike's idea and said he would review the contracts to see if that could be done.

Agenda Item #6 - Report on the bond debt repayment.

Godfrey referenced the handout titled Bond Payment – Seed Laboratory. He reported that members of the Seed Advisory Board met with the Secretary and his staff on August 3, 2006 to consider different ways that the bond debt could be handled. The issue arose when Godfrey evaluated the lab's reported expenditures from FY 02/03 and FY 03/04 and the Ag Fund portion of the Seed Laboratory's budget. He compared those expenditure values to the corresponding revenue received in the Ag Fund from the processing of service samples. He stated that expenditures are approximately \$60,000 per year and revenue from service samples is only around \$30,000 per year. When this deficit was coupled with the bond debt payment of another \$30,000 per year, it became apparent that the Ag Fund is going to have a negative balance very soon.

The Secretary's staff and the Seed Services Program developed three options for the Board to consider.

The first option was that each year the Seed Services Program would transfer approximately \$60,000 to the seed laboratory to cover the shortfall. The effect of this would be to increase the overall cost to Seed Services Program to fund the laboratory and perhaps trigger a need to increase the assessment rate.

The second option was to transfer the operating expenses of approximately \$15,000 to the seed laboratory general fund and increase the service sample fees to cover the \$45,000 shortfall. Godfrey noted that the fees were just raised and if another increase was necessary, it would probably require two steps, during which time the lab would still have a shortfall. This option could make it necessary for Seed Service to tap into the Ag Trust Fund to cover the expenses. He estimated that fees would have to be set about 200% higher than they currently are. He speculated that companies would probably use other labs and that the number of service samples would decrease to the point where the lab would still have a revenue shortfall.

The third option is to use money in the Ag Fund of the Seed Laboratory (Code 20.30.16) to only pay the bond debt. All of the expenses for the Seed Laboratory Ag Fund (20.30.16) would be transferred to the Seed Laboratory (20.30.15). Godfrey estimated that the remaining funds in the Ag Fund of 20.30.16 could

be used to pay off the bond debt, which will take about 8 more years. He added that he recommends the third option.

Tingley asked Godfrey if the \$60,000 that historically would have been used to cover the shortages was coming from the funds originally set aside to seed the Ag Fund of 20.30.16. Godfrey noted that the intention was to use the fund to cover some expenditures in the seed laboratory, however the bond debt has remained fairly high. He noted that when the Board met with the Secretary on August 3, 2006, the budget office presented a summary of bond debt payments made over years. In 03/04 the bond payment was \$34,000 and in 05/06 it is \$29,000.

Tingley observed that these expenses have been occurring regularly for years. He noted that if we didn't have the Ag Fund of 20.30.16, the expenses would have been covered by the Seed Services Programs. Godfrey agreed and stated that in order to cover the expenses, the Seed Services Program would have spent more money than provided by its budget.

Meyer noted that one reason the Ag Fund has become depleted is because, until recently, the fees for service samples were not changed since 1989. That situation kept the revenue received at a lower value and made it necessary to cover expenditures with the reserves in the Ag Fund of 20.30.16. Meyer stated that fee increases were requested, and the Board approved the increase, but for various reasons they were always denied at some other level.

Matteis asked how the new fees compare to the fees of private labs. Meyer responded they are higher. Matteis commented that the goal is to have them higher.

Godfrey stated that Steve Brown, who is in CDFA Permits and Regulations, was able to move the fees for services by the seed laboratory to an area of the regulations that are outside of the seed inspection regulations, thus allowing CDFA to change the fees without a lot of review from the Office of Administrative Law. This maneuver gives the Board the ability to change the fees on an annual basis.

Chairman Keithly asked Godfrey to review the reasons why he supports option three. Godfrey responded that option three would basically split the expense. Rather than the entire \$60,000 coming out of the Seed Services Budget, only \$30,000 would come from the Seed Services Program. The other \$30,000 will be picked up by the general fund. Various fees and indirect costs in the Seed Lab (20.30.16) budget will be taken out and placed into other budgets administered by Umesh Kodira. In addition, since the seed laboratory budget will only have a transfer between function codes, pro rata goes away or gets spread throughout the entire department. Godfrey clarified that if there are expenditures in the Seed Lab Ag Fund budget (20.30.16), there will be indirect costs, interdepartmental charges and pro rata.

Tingley motioned that the Board accept and recommend option three as presented. Van Skike seconded the motion. No additional comments or discussion were presented. The motion passed.

Agenda Item #7 – Seed Lab Ag. Fund

Chairman Keithly moved to item seven of the agenda, a discussion of the Seed Lab Ag Fund per Van Skike's motion at the May meeting. Godfrey referenced a green handout titled Seed Laboratory 20.30.16 Ag Fund Condition. He stated that he used the figures from the green handout to build the proposals discussed in the previous agenda item. He focused attention on the 05/06 column and noted there was only one expenditure, the \$30,000 bond debt repayment. Godfrey believes that the annual revenue from service samples, coupled with the interest received, will offset the annual payment of \$30,000 for the bond debt repayment. He noted that in 04/05, the revenue collected plus interest was \$35,646. His projections for 05/06 and beyond are \$32,000. If these scenarios hold true, then the fund condition should remain stable at around \$80,000.

There were no comments or discussion.

Agenda Item #8 – Discussion of Increasing the Funding of the UCD SBC from \$150,000 to \$200,000/year

Bradford stated that he would first like to provide a brief overview of the research programs, public service programs, educational programs and strategic goals of the Seed Biotechnology Center. He explained that there are three areas in their research.

The first area is called Stewardship and Co-existence, which deals with co-existence of different types of commodities throughout the marketing and production world. He noted their recent Crop Science publication about the results of a pollination study on cotton. He commented that the data is now available for consideration if anyone wishes to revise isolation or certification standards. The SBC has also completed an alfalfa pollination study. Bradford noted this study was completed prior to the release of Roundup Ready™ Alfalfa and that the SBC was involved in stakeholder meetings to discuss the procedures that will be in place for producing seed of Roundup Ready™ Alfalfa in California. He reported that as a follow-up to the alfalfa pollination study, Dr. Larry Tueber and Dr. Allen Van Deynze have received a \$400,000 grant from the USDA Risk Management Program to continue and expand the alfalfa pollination study. Since Roundup Ready™ Alfalfa has been released, a much larger study can now be done on commercial scale productions of alfalfa rather than the small scales previously allowed under permit.

On a slightly different note, Bradford reported that a project related to alfalfa has been submitted and proposes to evaluate proteins that might inhibit lygus bug, a pest known to damage alfalfa seed. Van Skike noted that the lygus bug is the number one pest of cotton. Bradford stated that the protein being evaluated would inhibit the enzymes that degrade the cells before the insect sucks out the contents. He added that John Ladovich has been working on this idea in pears for about 10 years. The problems caused by lygus bug threaten the sustainability of alfalfa seed production in the state. He added that this project has not yet been funded and presents another opportunity for collaboration between the university and industry. The basic strategy is to look within the species or closely related species in order to find the proteins that inhibit the enzymes, and then incorporate the genes responsible for those enzymes into alfalfa.

Van Deynze commented that traditional alfalfa breeding programs have been trying to find good resistance to lygus bug for 40 years or more but only had marginal success since it is so difficult to select for. The hope is that by evaluating alfalfa germplasm with molecular techniques, the plants with the correct proteins can be selected, and the genes that code for those proteins can be bred into commercial varieties.

Van Skike asked if this system could be used for cotton. Van Deynze stated that the system is being setup so that it can be expanded to other crops. Bradford added that some preliminary work has already been done with cotton.

Bradford reiterated that the overall goal of this research is create new markets while also protecting old markets. He emphasized that the information generated can be used by both new and old markets.

The next area of research at the SBC is the development of breeding tools. Bradford reported that Dr. Van Deynze has been very successful in developing molecular markers to assist in the development of cotton and tomato. These efforts were funded by Cotton Incorporated, UC BioStar and the USDA. Another UC BioStar project in conjunction with seed company partners is developing a chip based system for identifying markers in lettuce. One chip will contain 6.6 million spots of DNA, which will allow simultaneous mapping of over 20,000 loci. This ability will extremely speed up the mapping of genes in lettuce, helping to identify genes of importance. He clarified that none of these efforts involve transgenics, but instead are just useful tools for breeding.

Bradford stated that in the past week, Van Deynze held a meeting of 50 or so tomato, potato and pepper geneticist or researchers from private and public interests. The purpose of the meeting was to organize a CAFA-Coordinated Agricultural Project, which is a way to get funding through the USDA for developing genetic resources for that whole family of plants. He stated that this will take another year or two before a proposal is put forward.

The third area of research involves novel traits, which includes transgenics. The SBC has an ongoing project, partially funded through UC BioStar, with a biotech company called Ceres. The focus of the SBC effort is to determine if beneficial genes of *Arabidopsis* that are identified by Ceres, can be transformed into the tomato genome and still remain useful or beneficial to tomato. These efforts will involve several years of evaluating the plants in the field.

Bradford reported that extramural research funding in the form of grants, has already been procured through 2008 in the amount of approximately three million dollars. Much of the funds are designated for transgenics research and biotechnology but some are designated for multi-use, meaning they are not restricted in any way. He noted the efforts and success of Dr. Allen Van Deynze in obtaining many of the grants.

In the area of public service, the SBC has been very involved in regulatory issues. One effort has been the Specialty Crops Initiative, which Bradford has previously spoken to the Board about. He reported that he would be traveling to Washington D.C. to meet with stakeholders about making the whole concept a reality, but he cautioned that the success of the Specialty Crops Initiative will be dependent on involvement of lobbying organizations and industry associations, such as the California Seed Association and Western Growers.

On the international level, Van Deynze has been involved with a group called Public Research and Regulations Group. They principally focus on such activities as the Cartagena Protocol and biosafety protocols. Van Deynze participated with the group at the last meeting in Montreal. The idea of the group is to provide scientific input from public sector scientists knowledgeable about biotechnology, instead of just having input from government or regulatory people and non-governmental interests. This is important work because the group will be involved in setting the international protocols for the transfer of living modified organisms and will consequently have a big impact on trade.

The SBC and UC Extension assembled sixteen fact sheets to cover the whole area of coexistence for biotechnology and organic productions practices. These fact sheets are in the final stages of publication. They provide neutral information about a lot of topics, some of which were of concern for the initiative process in some counties during the November election. Bradford noted that Measure M was defeated in Sonoma County. This Measure would have put a 10-year ban on genetically modified organisms in Sonoma County. The SBC provided some pre-ballot declarations to the court in terms of factual content when the opposing sides sued each other over the content of the ballot statements. Bradford also participated in public discussions and contributed some Op-Ed articles to address or challenge arguments that were not scientifically valid but were being put forward in the political debate.

On a slightly different note, the SBC has moved forward with the Plant Breeding Academy, which is targeted toward personnel currently involved in private breeding programs but who lack the academic background in genetic theory to advance as breeders. The faculty has put together a curriculum and the advertisements are out to solicit potential students.

Bradford provided a handout titled Budget/Actual 2003-2009 to facilitate a discussion of the future financial goals of the SBC. He noted that the present three-year contract with the Seed Services Program will end in June. The SBC has a goal to maintain current staffing and programs while also finding additional funding to grow the SBC. A survey conducted last fall and reported to the Board, indicated that stakeholders were in favor of SBC growth and want greater participation by SBC at various levels. Budget projections of May 2005 indicated that the SBC would have inadequate funds for staff and basic operations starting next year. Since that time, Dr. Allen Van Deynze has successfully attracted more grant funding and the Plant Sciences Department has picked up 25% of the Program Representative's position. Since the SBC is now recognized as providing outreach functions, the Department is providing support. In addition, the Department is covering more administrative costs such as paper and mailings. The combination of these new sources mean the SBC will have adequate funds through June 2006.

It should be noted however, that when costs for the SBC are projected for the next 3-year cycle, including salary adjustments for staff and essential travel, the funding appears to be adequate for 2005-06 but will

become increasingly inadequate (negative) as we move into 2008. Consequently the SBC will have to either take funding from new initiatives or cut back in other ways. Bradford noted that the Board has provided \$300,000 in the last two years and that the SBC has leveraged that funding into an eleven million dollar building where many beneficial research activities are conducted. The SBC is currently trying to obtain external funding for an Executive Director. The goal was to obtain \$200,000 to cover salary, benefits and operating funds for the Executive Director for three years. At present the SBC has commitments for \$460,000 of the \$750,000 necessary to fund the position for 3 years. Although the goal has not been reached, Bradford is optimistic that more funding can be obtained and the SBC can fill the position in the spring of 2006. He noted that the university has already increased its funding in the form of specific funding from the Dean and support from the Plant Sciences Department. He expressed hope that the Seed Advisory Board will continue to fund the SBC.

Chairman Keithly asked if any of the research conducted at the SBC will eventually generate some royalties. Bradford indicated that most of the projects currently underway are not expected to generate any royalties. He noted that when the UC BioStar Program funds a project, the university will own anything that is developed as a result of those efforts. Most of the projects are at a level where it is not likely many patentable things will directly come from them. In addition, developments that result from projects funded by UC BioStar are generally made available to everyone. There is some potential that if some funds are generated, a proportion of those funds can come back to the program, however that is something that is negotiated with the university and can be quite complicated.

Falconer asked if other projects in the future could generate funds. Bradford recognized the possibility, but added it is very dependent on the funding. If something was developed from research funded by USDA or if something was developed from very specific research with a company where specific agreements have been made, there could be some funds generated. Van Deynze added that as a general policy, the SBC tries not to get into such exclusive contracts. Bradford added that the SBC does not see royalty income as a reliable source of funding.

Scarlett asked if the grant money received by Van Deynze could be used by the SBC. Bradford explained that most of the money is used for research but some grants allow the principal investigator to charge as much as 10% of their salary for administrative costs of the grant. By doing this on multiple grants the SBC has been able to cover about 30% of Van Deynze's salary.

Chairman Keithly asked Bill Van Skike to lead a discussion about increasing the funding of the Seed Biotechnology Center from \$150,000 to \$200,000. Van Skike asked Matteis to report on a conference call of the CSA Board regarding the \$50,000 increase in funding to the SBC. Matteis reported that no action was taken during the conference call because there was some uncertainty as to what the extra \$50,000 would be used for. He stated that the CSA Board agreed that the Seed Advisory Board should provide funding to the UCD Seed Biotechnology Center at the \$150,000 level for another three years. With regards to the extra \$50,000, the CSA Board wants to learn more about how the money will be used and would like to consider the issue at the CSA spring meeting.

Van Skike made a motion for a new three-year contract to fund the UCD Seed Biotechnology Center at \$150,000 per year. Patin seconded the motion. Keithly asked for discussion.

Godfrey clarified that the new three-year period would begin July 1, 2006.

Scarlett asked if the first time the Board decided to give the SBC \$150,000 per year, over a three year period, it considered the initial funding to be a contribution to get the SBC started or was it something that would go on for many years. Matteis stated that the CSA Board had a similar discussion and he believes they would agree their initial sentiment was that the SBC would eventually fund itself. He then asked Bradford what would happen if the SBC didn't get \$200,000 from the Seed Advisory Board. Bradford stated that without the financial support of the Seed Advisory Board, he thinks the SBC would cease to function. He clarified that although the SBC has been able to leverage the initial investment by the Board into a bigger and better program, funds received from grants and such are used for specific projects. The

seed industry, through the Seed Advisory Board, is providing money to fund the basic infrastructure of the SBC.

Scarlett asked Bradford if he saw funding of the infrastructure as a potential problem when the SBC initially started. Bradford responded that he always viewed funding by the industry as a long-term investment to provide the basic structure and continuity for the program. Van Skike commented that his recollection of the initial discussions about funding of the SBC involved a range of possibilities. One was the possibility of the SBC becoming self-sufficient and then finding some mechanism to get an Executive Director as a long-term goal. The original request included a motion for an Evergreen Commitment to the \$150,000 per year. Some seed industry people were not interested in supporting the Evergreen Commitment because they wanted a check and balance system. The decision was finally made to initially provide a 3-year commitment and to ask for accountability to make sure that the goals and objectives of the SBC were in alignment with the California seed industry. As long as the goals were parallel, there was the possibility of continuing the 3-year contracts into the future. This provides the industry a choice of continuing the funding, increasing the funding or removing it completely. Van Skike stated that the Evergreen Commitment was one extreme and self-sufficiency was the other. The reality is that the industry's relationship with the SBC has been somewhere in between.

Matteis stated that the activities of the SBC benefit all of the seed industry, whether it's organic producers or biotech producers. The outreach provided is very useful and informative. He noted how important it is to have a third party weigh-in on critical issues. Matteis added that if you also consider the leveraging the SBC has done with the initial \$300,000 from the industry, the value returned on the initial investment has been very good.

Scarlett wanted to make sure that companies not selling biotech seeds were also supportive of the SBC. Matteis responded that while some companies are negative on the idea of biotech, he emphasized that a large percentage of what the SBC does has benefit to all of the seed industry.

Patin stated that he believes the industry wanted to support the SBC for the long-term, but they wanted a mechanism built into the funding to allow the industry to evaluate or measure the activities of the SBC. These are simply measures of accountability.

Larry Hirahara asked if UC Davis plans to continue its partnership in supporting the SBC. Bradford replied UC Davis has been very supportive and that the SBC is being used as an example of a great university/industry partnership.

Chairman Keithly called for a vote on the motion to fund the UCD Seed Biotechnology Center for another three years at the level of \$150,000 per year. The motion carried.

Keithly noted that the Board will consider providing an additional \$50,000 to the SBC after the spring meeting of the CSA.

Agenda Item #9 – The Fund Condition of the Seed Services Program

Heaton referenced the yellow handout titled Seed Services Fund Condition November 17, 2005. Under the column 2005/06 he noted the value of seed sold in California as \$367,913,750. The total assessment collected from the sale of seed was \$1,777,324. He expected that value to increase slightly as the year progressed. He stated that the program was on target for the projected budget and was maintaining adequate reserve.

Godfrey noted that traditionally this would be the time for the Board to make a motion regarding the assessment rate for the next fiscal year. He suggested that such a motion not be made until Board meets in May, after the spring meeting of the CSA. He noted that the Board would then be able to consider the recommendation of the CSA members regarding the request to provide an additional \$50,000 for the SBC.

Patin commented that he was very pleased with the handout titled Analysis of Assessment Increase that Heaton provided to each Board member. He noted that the analysis showed 50% of the funding from assessments each year comes from a fairly small percentage of companies. Matteis noted that a similar situation occurs in the Feed Program.

Godfrey noted that this type of information wasn't really tracked until the mid 1990s. He recalled that the conversion of open-pollinated varieties to hybrid varieties provided the impetus for the program to track the value of seed sold within different categories. The database is now set up to display the value of seed sold by an individual company from one year to the next. This allows the Seed Services Program to look critically at reduced value of seed sold by an individual company and to seek additional explanations if the drop in value is significant.

Patin asked if the Seed Services Program has the right to audit. Godfrey replied that auditing is possible for the Seed Services Program. Heaton added that eventually he intends to develop the computer programming that will compare the value of seed reported from one year to the next and identify the biggest drop in reported value for possible audit.

Falconer asked Godfrey what the maximum assessment could be. Godfrey replied 40 cents per \$100 value of seed sold. Currently the rate is set at 32 cents.

Scarlett asked if anyone maintains a history of the assessment rate over years. Godfrey replied that the information is available and he noted that the rate was higher in the early 90s. His recollection was that the rate went up to 33 cents in 1991 or 1992. For a long time the rate was held at 25 cents because sales kept increasing. That scenario caused the Program to have "excessive reserves" and resulted in the assessment rate being dropped to 15 cents.

Godfrey noted that in 1993, the Program made a refund to companies that paid assessments because there was a threat the Governor's Office was going to borrow the reserves. While that was prevented, they did take the interest generated from those reserves. This caused a lawsuit because the law states the funds can only be used for the sole purpose of the California Seed Law. The result of the lawsuit was that the interest was paid back with interest. While nobody has tried to take the reserves in recent years, the attempt has been made three or four times in the past. The Program quickly informs them of the law and the previous case, which stops the attempt.

Agenda Item #10 - Seed Complaints

Heaton reported that he is currently working on a new seed complaint. He stated that since this is the first seed complaint that has been initiated since he took over the program, he has a better understanding of how much time is required to administer the seed complaint process. The complaint alleged that there was weed seed in the planting seed and that the infestation of weeds affected the quality of the hay crop. The investigation involved the collection of seed samples from the dealer's warehouse and the collection of soil samples from the farm. The evidence was processed by Seed Services personnel and staff at the Seed Lab. Heaton noted that delays occurred because of previous travel commitments, other responsibilities, and farming schedules of the participants. He stated that the program is currently organizing a meeting of the Investigative Committee. He explained that he placed this item on the agenda because he wanted to let the Board know how much time and resources just one seed complaint can require.

Another complaint handled by the Seed Services Program involved a PVP Violation brought to Heaton's attention by the PVP Certificate holder. He reported that the program collected seed samples from a seed warehouse and intended to determine if the seed collected matched the PVP variety. The parties involved managed to work out an amicable settlement and it was not necessary to pursue the matter further.

Matteis noted that the enforcement of PVP rights is a new provision that was recently placed in the California Seed Law.

Heaton stated that he is hopeful that the Seed Services Program can organize some sort of outreach to seed conditioners to let them know about their responsibilities under the PVP provisions.

Matteis recalled that the seed industry expressed concern about how expensive it was to protect their intellectual property through legal channels. The California Seed Association was able to get the two chapters of the Federal Seed Act dealing with PVP incorporated into the California Seed Law. This made violations of PVP a violation of state law and something that the Seed Services Program could enforce.

Heaton explained that since these PVP provisions are now in the state seed law, the Seed Services Program has the authority to go into a seed business and pull seed samples to check for compliance to the California Seed Law.

Agenda Item #11 – The Legislative Report

Matteis provided a handout of AB1508, which CSA introduced as a vehicle to deal with the county-by-county restrictions on biotech. That bill is in the Second House, presently in the Ag Committee but ready to be moved forward.

Alternatively, AB1056 is a bill authored by Senator Florez and not one introduced by CSA. This bill also represents an attempt to fix the county-by-county restrictions. Matteis commented that he felt Florez did a great job in Committee and has been a friend to agriculture in a lot of ways. The bill is currently in the Assembly Ag Committee. He noted that some of the people that deal with vine and orchard crops are concerned that AB1508 only deals with seed. They like how AB1056 covers nursery stock as well. There were a couple of county ordinances that some people felt AB1508 would pre-empt, however Matteis didn't believe that would happen. He cited the example of a couple county ordinances dealing with mosaic virus. He also cited concerns by the cotton industry that the AB1508 might impact the Cotton District.

The CSA argued that seed is really the big issue and if county-by-county restrictions are dealt with for seed, the other products don't really have many biotech issues for people to coalesce around with county initiatives. That argument was not accepted. The language will rescind therefore to cover nursery stock. The two bills will continue and efforts will be made to move them forward. Similar legislation has been passed in about fourteen other states. Matteis noted that the political climate in California is different and it is more difficult to pass similar legislation. He noted that some of the legislators have expressed an interest to visit UC Davis to learn more about biotechnology.

Bradford noted that Rob Brewer, Chief of the Capital Managers Group did visit the SBC a few weeks ago.

Chairman Keithly asked how the proposed legislation would affect the Lettuce Mosaic Virus (LMV) Ordinances. Matteis noted that for years double testing of lettuce seed for LMV has occurred between Monterey County and Imperial County. Technically these county ordinances are only valid if submitted and approved by the Secretary. In the opinion of some, these ordinances are not legal, however that issue has not been pursued. It may be possible for the counties affected to simply submit their ordinances for approval by the Secretary and then the proposed legislation can move forward without objection by the counties that believe the legislation would negatively affect their ordinances. Matteis suggested that a future agenda could contain a discussion for a request by the Board, that the Secretary look at the ordinances enacted by the counties.

Godfrey commented that when AB1508 was initially proposed, there was an immediate response from the Agricultural Commissioner in Imperial County stating that they would oppose the bill. Matteis noted that the Secretary already has the authority and occupies the field with regards to pest exclusion. Consequently AB1508 did not cause a problem for the counties with pest exclusion ordinances but rather they already have a problem in that they don't have the authority to be doing what they are doing.

Chairman Keithly requested that the issue of authority for county ordinances be placed on the agenda for the next meeting.

Agenda Item # 12 - The Status of Arbitration Regulations

Matteis referenced a draft of the Arbitration Regulations dated 11-16-05. He noted that attorneys present at CSA's spring meeting raised questions about whether the regulations for arbitration should even be pursued. Their objections resulted in the need for further discussion with the CSA Board and the CSA Attorney. In the interim, the CSA attorney changed firms and only recently presented the document back to Matteis. He quickly reviewed the document and would like to briefly go over some of the key changes with the Board. He requested however, that a discussion of these proposed arbitration regulations be put on the agenda of the May meeting, after he has more time to present it at the spring meeting of the California Seed Association.

Page two shows the addition of seed borne diseases as a possible cause for crop failure and a reason for dispute which would be subject to the arbitration regulations.

On page three, language was added to handle complaints that deal with associated technology or other value added components. Another change was to clarify that the term "perform" is the equivalent to the term "produce."

Changes on pages three, four and five deal with Seed Dispute Councils. The idea of this section is to provide a pool of people that a Seed Dispute Council can be drawn from. Through this mechanism several councils can be formed as needed and one council will not be overburdened by several arbitrations. Language was added to provide for the appointment of "a pool of industry representatives including growers and seed licensee representatives from which to appoint impartial investigation and alternative dispute resolution councils composed of a hearing officer and three members and their alternates to consider complaints referred to them by the Department in accordance with this article."

Page six deals with the whole issue of confidentiality and inadmissibility of information learned through participation in the arbitration process. There is some question about how much confidentiality can be achieved in light of the Freedom of Information Act. The CSA Attorney believes that confidentiality can be achieved via agreements signed by both parties. Matteis tried a slightly different approach and took agreement language and put it into regulatory format, which is presented on page six and seven of the handout. He noted that the regulatory language can then be used to form confidentiality statements that both parties sign. The intent is to keep everything revealed during arbitration, confidential.

Page eight has language developed from AB2061, a Market Enforcement Law, which attempts to expedite informal mediation prior to arbitration. The process does not involve attorneys. They may be present, but just not allowed to participate. If the expedited informal mediation does not work, then the process moves to the formal arbitration.

Page ten provides a brief timeframe for the Department to complete the investigation. New language was provided to address the Department's concern that some lab procedures or technical tests may cause the investigation to go longer. The language allow the Department to extend the conclusion of the investigation by an additional forty-five (45) days or additional time if necessary to complete a growout but the Department shall notify the purchaser and seller in writing, stating the reasons for the extension.

The next change (page 10) deals with providing signed copies of conciliation agreements. On page thirteen, code has been added to allow for the council to recommend assignment of costs, if any, of settling, including fees and damages.

The last section of the handout provides language to send a strong message to the courts that this process should be deferred to unless there are some real good reasons not to. If an arbitration decision is made, the court should just consider what the decision is and not anything else. This is spelled out in the line that reads "The parties further agree that the finder of fact in any subsequent proceeding shall/may consider the Arbitrator(s) findings of fact and final award, if any, to be prima facie evidence in favor of the party prevailing at the Arbitration thus establishing a rebuttable presumption affecting the burden of producing

evidence as defined in California Evidence Code Sections 600 through 604.” Matteis noted that the industry needs to decide if they want *shall* or *may* in the persuasive provision. He noted that if the word is “may”, it sends a kind of message but still provides an out. He thinks the industry would prefer “shall.”

Patin asked if any state has binding arbitration. Godfrey replied “No.” Matteis added that other states have mandatory participation in the process if you add the notice to your label. California is the only state that makes you put it on your label. So it is mandatory to participate but the arbitration decision is not binding. Matteis referenced the last page of the legislative packet handout. He explained that there has been some discussion by members and the Department about implementing some sort of consequence for registrants refusing to participate in the alternative dispute resolution process. In response to those discussions, he drafted language for section 52357 that basically says the registrant is bound to participate in the process and if they don’t they could lose their authorization to sell seed in California. He noted that the language was all encompassing and not restricted to addressing the problem of out-of-state companies not participating. He stated that such language could possibly create some sort of constitutional problems. He explained that he would be sharing this proposed language with the legislative committee at the spring meeting of CSA.

Matteis said the next step will be to present the package to the CSA and then to the CDFA attorneys.

Agenda Item 13 - The Nominating Committee – expiration of Board Member Terms

Chairman Keithly asked Bill Van Skike to serve as the Chairman of the nominating committee and Ron Tingley, Gabe Patin and Rick Falconer to be members.

Agenda Item 14 - The Bagley Keene Act procedures

Heaton explained that the Bagley Keene Act provides the requirements for which public meetings must be conducted. He placed this item on the agenda because he wanted to inform the Board that they should not be alarmed when they see additional notifications on the next meeting announcement and proposed agenda. He explained there will be additional text to inform the public about accommodations and accessibility for disabled attendees. He stated that future agendas will have an item for closed executive session in case the Board wants to talk about personnel issues which cannot be discussed in the public session.

Godfrey noted that another change the Board should be aware of is a requirement for teleconferencing. He stated that when a teleconference is to occur, the Program has to notice every location where a Board member intends to call from. This is a requirement because it is an open public meeting and the locations must be publicly noticed 10-days before the teleconference. Godfrey said the Department is expecting to get further clarification of this requirement.

Matteis asked how the notice is posted. Godfrey replied the notice is placed on the CDFA web site under public meetings and notices.

Agenda Item 15 – The next meeting date

Chairman Keithly suggested the first two weeks of May. Peterson suggested that perhaps the meeting could be held near the date of the Seed Industry Conference, which is May 17th and 18th in Woodland. Keithly proposed May 17th at 8:00 am. Susan Webster suggested that the meeting could be held at UC Davis so participants could more easily travel to Woodland. The proposed meeting date and location were accepted.

Van Skike made a motion for adjournment. Falconer seconded the motion. Chairman Keithly adjourned the meeting.

Respectfully submitted by John Heaton.